## MOHD AZRAN RAHMAT & ANOR v. MAZLAN ALIMAN

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
HAMID SULTAN ABU BACKER JCA
UMI KALTHUM ABDUL MAJID JCA
[CIVIL APPEAL NO: C-01-396-11-2013]
24 MARCH 2015

***TORT:*** *False imprisonment – Unlawful imprisonment – Allegation of wrongful arrest and illegal detention – Accused remanded by Magistrate's order – Whether there was reasonable grounds for suspicion that an offence was being committed – Claim for damages*

The respondent's cause of action against the appellants in the High Court was based on the tort of false imprisonment. It was the respondent's case that the appellants had perpetrated wrongful arrest and illegal detention against the respondent based on the allegation of criminal trespass under s. 441 of the Penal Code. The arrest and detention was done following a police report made by one Awang Sulung ('Felda Manager'). The complaint by the Felda Manager was that the respondent had trespassed the Balai Raya Felda Lembah Klau ('Balai Raya') to conduct a Majlis Dialog which was promoted by one Fauzi ('the promoter'). However, the Majlis Dialog did not occur as permission to use the Balai Raya and a police permit was not obtained by the promoter. Consequently, the respondent was given permission by one Hamidun ('SP2') to proceed to his house to socialise with about 15-20 settlers. The promoter and SP2 were the registered proprietors of the house. As such, the respondent contended that the alleged criminal trespass did not happen since the persons effectively in possession of the property had consented for the premise to be used. The High Court reasoned, *inter alia*, that the Felda Manager who lodged the police report could not be said to be in possession of the whole of Felda Lembah Klau. Satisfied that the arrest and remand was illegal, the High Court awarded *inter alia* the sum of RM300,000 as general damages, RM50,000 as exemplary damages and costs of RM50,000. Aggrieved, the appellants appealed. The fundamental issue that arose for determination was whether the arrest was made on a reasonable suspicion that an offence had been committed which was the foundation of the cause of action before damages and exemplary damages could be awarded.

**Held (allowing appeal with costs)**
**Per Abdul Wahab Patail JCA delivering the judgment of the court:**

**(1)** An order of a Magistrate authorising the detention of the arrested person beyond the period of 24 hours made under s. 117 of the Criminal Procedure Code is a judicial act. A claim for damages cannot be found

against the Magistrate by virtue of s. 107(1) of the Courts Ordinance 1948. Pursuant to such detention order, a claim for damages also cannot be found against a police officer in accordance to s. 41(1) of the Police Ordinance No. 14 of 1952 (now s. 32(1) of the new Police Act No. 41 of 1967. (para 12)

**(2)** The Magistrate would have issued a remand order only if the Magistrate believed that there was reasonable grounds for suspicion that an offence had been committed and further investigation was required to dispose of it. The police is duty bound to investigate and give a status report to persons who had given information under s. 107 of the Criminal Procedure Code if requested. A reasonable suspicion that an offence is committed is sufficient to require the police to complete the investigation and put the matter to the court to determine whether an offence as charged had been committed or not. The final charge could only be formulated after the investigations had been completed. (paras 14 & 16)

**(3)** There was no approval for the use of the Balai Raya nor police permit had been obtained for the Majlis Dialog, and therefore, there was no reason for the respondent and Fauzi to arrive at the Balai Raya. Although the dialogue was not carried out to completion, there was reasonable grounds for suspicion that an offence under s. 441 punishable under s. 447 of the Penal Code was being committed. Further, the respondent was not a person unlikely to conduct a dialogue as he was the president of an NGO linked to Felda settlers. There was also no evidence adduced of any information or complaint filed that it was a false report. (paras 17 & 18)

***Bahasa Malaysia*** *Translation Of Headnotes*

Kausa tindakan responden terhadap perayu-perayu di Mahkamah Tinggi adalah berdasarkan tort penahanan salah. Kes responden adalah bahawa perayu-perayu telah melakukan penangkapan dan penahanan salah terhadap responden berdasarkan dakwaan pencerobohan jenayah di bawah s. 441 Kanun Keseksaan. Penangkapan dan penahanan tersebut dilakukan berikutan laporan polis yang dibuat oleh Awang Sulung ('Pengurus Felda'). Aduan Pengurus Felda tersebut adalah bahawa responden telah mencerobohi Balai Raya Felda Lembah Klau ('Balai Raya') untuk menjalankan Majlis Dialog yang telah dipromosikan oleh Fauzi ('penganjur'). Walau bagaimanapun, Majlis Dialog tersebut tidak dijalankan kerana kebenaran untuk menggunakan Balai Raya dan permit polis tidak diperolehi oleh penganjur. Oleh itu, responden telah diberi kebenaran oleh Hamidun ('SP2') untuk ke rumahnya untuk bersosial dengan kira-kira 15-20 orang peneroka. Penganjur dan SP2 adalah pemilik berdaftar rumah tersebut. Oleh itu, responden berpendapat bahawa pencerobohan jenayah yang dikatakan tidak berlaku kerana pemilik berdaftar hartanah tersebut telah bersetuju agar premis tersebut digunakan. Mahkamah Tinggi berpendapat, antara lain, bahawa

Pengurus Felda yang membuat laporan polis tidak boleh dikatakan memiliki keseluruhan Felda Lembah Klau. Berpuas hati bahawa tangkapan dan reman menyalahi undang-undang, Mahkamah Tinggi mengawardkan, antara lain, sejumlah RM300,000 sebagai ganti rugi am, RM50,000 sebagai ganti rugi teladan dan kos RM50,000. Terkilan, perayu-perayu telah merayu. Isu penting yang timbul untuk penentuan adalah sama ada penangkapan tersebut dibuat berdasarkan syak yang munasabah bahawa suatu kesalahan telah dilakukan yang merupakan asas kepada kausa tindakan sebelum ganti rugi am dan teladan boleh diawardkan.

**Diputuskan (membenarkan rayuan dengan kos)**
**Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:**

**(1)** Sesuatu perintah Majistret yang membenarkan penahanan orang yang ditangkap di luar tempoh 24 jam yang dibuat di bawah s. 117 Kanun Prosedur Jenayah merupakan suatu tindakan kehakiman. Tuntutan ganti rugi tidak boleh dikenakan terhadap Majistret menurut s. 107(1) Ordinan Mahkamah 1948. Berikutan perintah penahanan tersebut, tuntutan ganti rugi juga tidak boleh dikenakan terhadap seorang pegawai polis menurut s. 41(1) Ordinan Polis No. 14 Tahun 1952 (kini s. 32 (1) Akta Polis baru No. 41 Tahun 1967.

**(2)** Majistret kemungkinan telah mengeluarkan perintah reman hanya jika Majistret percaya bahawa terdapat alasan-alasan munasabah untuk mengesyaki bahawa suatu kesalahan telah dilakukan dan siasatan lanjut diperlukan untuk melupuskannya. Pihak polis bertanggungjawab menyiasat dan memberikan status laporan kepada orang-orang yang telah memberikan maklumat di bawah s. 107 Kanun Prosedur Jenayah jika diminta. Satu keraguan munasabah bahawa suatu kesalahan telah dilakukan adalah mencukupi untuk memerlukan polis untuk menyiapkan siasatan dan meletakkan perkara tersebut kepada mahkamah untuk menentukan sama ada suatu kesalahan sebagaimana yang dipertuduhkan telah melakukan atau tidak. Pertuduhan yang akhir hanya dapat dirumuskan selepas siasatan selesai.

**(3)** Tiada kebenaran untuk menggunakan Balai Raya atau permit polis bagi Majlis Dialog diperolehi dan oleh itu tidak ada sebab untuk responden dan Fauzi tiba di Balai Raya. Walaupun dialog tersebut tidak diteruskan sehingga selesai, terdapat alasan yang munasabah untuk mengesyaki bahawa suatu kesalahan di bawah s. 441 yang boleh dihukum di bawah s. 447 Kanun Keseksaan sedang dilakukan. Di samping itu, responden bukanlah seseorang yang tidak berkemungkinan untuk berdialog kerana responden merupakan presiden sebuah NGO yang dikaitkan dengan peneroka Felda. Juga tiada keterangan yang dikemukakan mengenai maklumat atau aduan yang difailkan bahawa ia adalah laporan salah.

A **Case(s) referred to:**
*Chong Fook Kam & Anor v. Shaaban & Ors [1968] 1 LNS 23 FC* ***(refd)***
*PP v. Mohamed Ali [1962] 1 LNS 129 HC* ***(refd)***

**Legislation referred to:**
Criminal Procedure Code, s. 107A
B Penal Code, ss. 441, 447

*For the appellants - Ahmad Hanir Hambaly; SFC (State Legal Adviser's Office, Pahang)*
*For the respondent - Wan Rohimi Wan Daud (Mohd Faizi Che Abu & Asmadi Abu Bakar with him); M/s Tengku Amalin'A-Ishah Putri, Faizi & Wan Rohimi*

*[Appeal from High Court, Temerloh; Civil Suit No: 21-5-2010]*

C

*Reported by Sandra Gabriel*

## JUDGMENT

**Abdul Wahab Patail JCA:**

D

**[1]** The first and second appellants, Mohd Azran Bin Rahmat, a Police Inspector and Kerajaan Malaysia respectively (collectively "the appellants") were named the first and second defendants in Guaman Sivil No. 21-5-2010 ("the civil suit") before the High Court in Temerloh commenced by the respondent Mazlan Bin Aliman ("the respondent"). Satisfied that the arrest
E and further remand was illegal, the High Court awarded the sum of RM300,000 as general damages, RM50,000 as exemplary damages and costs RM20,000.

**[2]** The appellants appealed to this court. By a majority decision, the
F appeal was allowed, the decision of the High Court was set aside, and costs awarded in the sum of RM5,000. The minority decision would allow the appeal in part by reducing the award of general damages of RM300,000 to RM5,000, and the exemplary damages of RM50,000 is maintained.

**[3]** The cause of action relied upon by the respondent as plaintiff in the
G civil suit is in the tort of false imprisonment. The cause of action was founded upon the assertions that:

(a) The respondent was arrested at 10.30pm on 9 March 2010 on the ground of an alleged criminal trespass upon which a Police Report No. SG RUAN/000192/10 was made, and at the time of arrest, all
H investigations and statements of witnesses had been completed;

(b) The subsequent remand sought and obtained on 10 March 2010 was defective and invalid as it was tainted upon an incorrect allegation of criminal trespass; and

I (c) Accordingly, the appellants had perpetrated wrongful arrest and illegal detention between 10.30pm on 9 March 2010 until 11 March 2010.

**[4]** The fundamental issue was whether the arrest was made on reasonable suspicion that an offence has been committed. See *Chong Fook Kam & Anor v. Shaaban & Ors* [1968] 1 LNS 23 FC.

**[5]** The offence concerned for which he was arrested was criminal trespass under s. 441 of the Penal Code and punishable under s. 447 which provide as follows:

> Whoever enters into or upon property in the possession of another with intent to commit any offence or to intimidate, insult or annoy any person in possession of such property; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with the intent to commit an offence, is said to commit "criminal trespass".
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> Whoever commits criminal trespass shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to three thousand ringgit or with both.

**[6]** The High Court reasoned that:

(a) Both limbs of s. 441 speak of "property in possession of another", but it can be immediately ascertained the manager who had lodged a report could not with any stretch of imagination be said to be in the possession of the whole Felda Lembah Klau;

(b) In this case, since the public hall was not used and there was also no attempt to use the hall, no discernible offence could be detected;

(c) The Felda scheme is not a restricted zone or gazetted as such. Therefore any member of the public could enter the settlement for any valid purpose. Even to hold a dialogue with the settlers could not amount to committing of an offence or insulting or annoying any person;

(d) The action of the respondent in talking with the settlers did not fall foul of the second limb. SP2 the owner of the residence and the person effectively in possession of the property had consented for his premise to be used. The plaintiff having obtained consent of the owner could not be said to have unlawfully remained at the premise. SP2 had in fact gone to the police station with the respondent to clarify this matter;

(e) In short, there was no recognisable offence committed by the respondent empowering the first appellant from arresting him. To add salt to injury, the first appellant dragged the respondent before the Magistrate and obtained a further remand order for a non existing offence. This was a clear abuse of power by the first appellant;

(f) In this case, the first appellant had failed to determine the veracity of the complaint of the manager of Felda before proceeding to arrest the respondent. Even a more rash action on the part of the first appellant

A was to ignore the facts and statement of the witnesses from whom he had recorded statements, pointing to the innocence of the respondent. The first appellant had clearly acted *mala fide* in arresting and detaining the plaintiff. Taking a leaf from the case of *Chong Fook Kam* (above) where the court took the following stand: ...; and

B (g) The High Court was satisfied that the respondent had proved that his arrest and the further remand was illegal.

**[7]** It was submitted for the respondent that the alleged criminal trespass did not happen because:

C (a) Section 441 requires there must be entry into or upon the property in the possession of another but the first appellant having completed the investigations knew that the respondent had not committed criminal trespass of Balai Raya Felda Lembah Klau, because the Majlis Dialog that was promoted by Syhamsul Fauzi bin Man ("Fauzi") with settlers
D of Felda Lembah Klau;

(b) At all times the Majlis Dialog did not occur because the promoter did not obtain permission to use the Balai Raya Felda Lembah Klau and did not obtain a police permit, and was cancelled by the promoter;

E (c) The respondent was given permission by Hamidun bin Yeop Isa ("SP2") to proceed to his house to socialise with about 15-20 settlers, Fauzi and SP2, who was the registered proprietor of his house;

(d) While they were there, the polis bantuan Felda, the Felda Manager Awang bin Sulong, and the police arrived, whereupon the informal
F program of socialising with the settlers was terminated, and they accompanied the Felda Manager to IPD Raub to make a police report;

(e) After a Police Report No. SG RUAN/000192/10 was recorded, the first appellant recorded the statement of the Felda Manager at about 3pm, again at about 7pm for a second time, and then between after Maghrib
G until about 10.30pm recorded the oral statement of the respondent;

(f) At about 5.45pm the respondent lodged a Police Report No. SG. RUAN/000194/10;

(g) At 10pm the first appellant had spent between 30 minutes to an hour to
H record the statement of SP2, who told the first appellant he was the registered owner of the house they were socialising in;

(h) After that the statement of Fauzi was recorded; and

(i) The respondent was arrested at the first floor of IPD Raub.

I

**[8]** The last was not undisputed. It was the evidence of the first appellant that the respondent was arrested in front of Bangunan Inderapura, Jalan Tras at about 11.15pm by him and a detachment of nine policemen. It was submitted for the respondent that Police Report No. RAUB/000865/10 of the arrest in front of Bangunan Inderapura, Jalan Tras at about 11.15pm by first appellant and a detachment of nine policemen was false.

**[9]** The allegation that the Police Report No. RAUB/000865/10 was false was summed up in submissions as follows:

> 30. Adalah tidak munasabah SD1 yang ketika itu sedang sibuk mengambil keterangan SP2 dan Fauzi, boleh keluar dari IPD Raub bersama 9 anggota yang lain kononnya untuk menangkap SP1.
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> 31. Bahkan SD1 sendiri mengakui dalam soal balas bahawa beliau mula mengambil keterangan SP2 lebih kurang jam 10.00 malam. SD1 mengakui tempoh masa untuk ambil keterangan adalah antara 30 minit hingga sejam. Sejurus selepas keterangan SP2 diambil, SD1 sekali lagi mengakui bahawa beliau kemudiannya mengambil keterangan daripada Fauzi, dalam tempoh masa antara 30 minit hingga sejam.
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> 32. Mengambil kira keadaan dan pada masa antara mengambil keterangan SP2 dan Fauzi yang bermula jam 10.00 malam, serta untuk memanggil 9 anggota untuk menangkap SP1 kononnya di hadapan Bangunan Inderapura, Jalan Tras, adalah merupakan satu pembohongan yang mempunyai motif jahat.
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> 33. Sedangkan Plaintif melalui keterangannya telah menyatakan beliau tidak pernah keluar dari IPD Raub sejak beliau sampai untuk membuat Laporan Polis pada jam 5.45 petang hinggalah dimaklumkan tentang tangkapan.
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> 34. Keterangan Plaintif disokong oleh SP2 yang melihat dan bersama dengan Plaintif sejak SP2 sampai di IPD Raub pada jam 9.30 malam.
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> 35. Selanjutnya, SD1 langsung tidak memanggil mana-mana seorang dari 9 anggota JSJ Raub yang kononnya bersama beliau membuat tangkapan di hadapan Bangunan Inderapura, Jalan Tras, untuk menyokong keterangan beliau.
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> 36. Keengganan SD1 memanggil mana-mana seorang dari 9 anggota JSJ Raub tersebut, hanyalah menunjukkan kecurangan dan penipuan maklumat tangkapan oleh SD1.
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> 37. Oleh yang demikian, penemuan fakta yang dibuat oleh YA Hakim yang bijaksana berkenaan isu ini adalah sangat tepat dan tidak perlu diganggu:
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> > On this issue I believed the evidence of the Plaintiff as I believe on the night of 9.3.2010 until late night he was at the Police Station and the 3rd Defendant was still there. To me, it made sense for the 3rd Defendant to allow the Plaintiff to leave the police station and then follow him to arrest him at another place. Again on this issue what was important to decide was as to why the Plaintiff was arrested at all.

## Deliberation And Conclusion

**[10]** We observed that although the basic issue in the cause of action relied on is whether there was reasonable suspicion that an offence has been committed, the case went on to submissions of "pembohongan yang mempunyai motif jahat", dispute as to when arrest was made, and failure to call any of the detachment of nine policemen to testify against the version of the respondent and SP2, that the arrest was made at 10.30pm at IPD Raub "hanyalah menunjukkan kecurangan dan penipuan maklumat tangkapan oleh SD1". These submissions were relevant for the claim of exemplary damages, but care must be taken to assess it separately because it is irrelevant to the determination of the primary question whether there was reasonable suspicion that an offence has been committed, which is the foundation of the cause of action before damages and exemplary damages may follow.

**[11]** As the part of the grounds of judgment of the High Court excerpted in the submissions for the respondent reproduced above shows, belief in the allegations led the High Court to colour its finding as to whether there was reasonable suspicion that an offence has been committed to warrant the arrest. The basis of judicial findings of fact is an objective test as to whether relevant admissible evidence proved upon a balance of probabilities the facts relied upon in a plaintiff's cause of action. Relevant admissible evidence is accepted. Credibility is assessed. Belief is a very subjective test, fraught with the risk of leading an objective assessment astray.

**[12]** We observed further that although *Chong Fook Kam & Anor v. Shaaban & Ors* (*supra*) was referred to as the *locus classicus*, the following part of the judgment appeared to have been missed:

> An order of a Magistrate authorising the detention of the arrested person beyond the period of 24 hours made under s. 117 is a judicial act and cannot found a claim for damages against the Magistrate because of s. 107(1) of the Courts Ordinance, 1948, which reads:-
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> > No ... Magistrate or other person acting judicially shall be liable to be sued in any civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.
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> Nor may such an order found a claim for damages against a police officer because s. 41(1) of the Police Ordinance No. 14 of 1952 (now s. 32(1) of the new Police Act No. 41 of 1967) provided:
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> > Where the defence to any suit instituted against a police officer is that the act complained of was in obedience to a warrant purporting to be issued by any competent authority, the Court shall, upon production of the warrant containing the signature of

such authority and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of such police officer.

In view of these provisions, Counsel for the plaintiffs was right in not claiming damages in respect of the detention following the Magistrate's detention order.

**[13]** In this case, a remand order was obtained the next day after the arrest in the evening of 9 March 2010, yet the claim was for damages for false imprisonment until 11 March 2010. The ground the first appellant proceeded with the remand application, as submitted before us by the respondent was:

56. Walau pun Defendan Pertama (the 1st appellant), yang telah mengetahui keseluruhan keterangan sebelum membuat tangkapan ke atas Plaintif (the respondent), dengan ketiadaan kesalahan oleh Plaintif (the respondent) berkenaan dengan siasatan bagi pencerobohan jenayah (criminal trespass) di bawah S. 441 dan S. 447 Kanun Keseksaan, masih meneruskan permohonan reman atas kesalahan yang tidak wujud dan sengaja di ada-adakan.

**[14]** Thus, it went back to the premise that needs to be established by the respondent as the appellant, that there was no reasonable suspicion that an offence has been committed. The Magistrate at the remand application had issued the remand order only if the Magistrate agreed, whether right or wrong, that there was reasonable grounds for suspicion that an offence had been committed, and further investigation was required to dispose of it one way or another.

**[15]** Part V Chapter XIII of the Criminal Procedure Code ("the Code") provides as to information to the police and their powers to investigate. The police reports made fall within the meaning of information relating to the commission of an offence under s. 107 of the Code. The Criminal Procedure Code (Amendment) Act 2006 effective 7 September 2007 inserted s. 107A which provides that any person who has given information under s. 107 may request for a report on the status of the investigation of the offence complained of in his information from the officer in charge of a police station where he gave the information, and the officer in charge of a police station shall give a status report on the investigation of such offence to the informant not later than two weeks from the receipt of the request made under sub-s. (1).

**[16]** In short, the police is bound to conduct investigations to determine whether there were reasonable suspicion that an offence had been committed to enable the police to give the status report to the person who had given the information under s. 107. It is not for the police to determine whether in fact an offence has been committed or not despite a person investigated or an accused being certain from his point of view that he has not committed any

offence. The fact remains that under the Code, where there is an information filed, the police is duty bound to investigate and give a status report to the person who had given the information under s. 107 if he so requests it. A reasonable suspicion that an offence is committed is sufficient, to require the police to proceed to complete the investigation and put the matter to the court to determine whether an offence as charged has been committed or not. The final charge itself can only be formulated after the investigations had been completed.

**[17]** Although the Majlis Dialog was not carried out because neither approval was given for the use of the Balai Raya Felda Lembah Klau, nor police permit obtained for the Majlis Dialog, the arrival of the respondent with Fauzi, the promoter at the Balai Raya Felda Lembah Klau in such circumstances give reasonable grounds for suspicion that an offence was being committed although it was not carried out to completion. If neither approval nor police permit had been obtained, there was no reason for the respondent and Fauzi to arrive at the Balai Raya Felda Lembah Klau.

**[18]** That there was no evidence that the Felda Manager had authority to grant approval is, in our view, entirely irrelevant, for the fact is that it was admitted there was no approval for the use of the Balai Raya Felda Lembah Klau for the Majlis Dialog and hence there was reasonable grounds for suspicion that an offence under s. 441 punishable under s. 447 of the Penal Code was committed. The respondent was not a person unlikely to conduct a dialogue. He was the president of an NGO known by the acronym ANAK (Persatuan Anak-anak Peneroka Kebangsaan) linked to Felda settlers.

**[19]** That there were divergent evidence clearly demanded investigation. It remains that there was a report by the Felda Manager that the police were duty bound to investigate. Obviously it is not unexpected there would be divergent versions. That made it necessary, after the versions were recorded, to decide what to do next to conduct further investigations. That the authority charged with the duty to conduct the investigations is being cast and pilloried instead as an opponent is much to be abhorred. In *Public Prosecutor v. Mohamed Ali* [1962] 1 LNS 129; [1962] MLJ 257, Thomson CJ has this to say of police witnesses:

> When a police witness says something that is not inherently improbable his evidence must in the first instance be accepted. If his evidence is contradicted by other evidence or is shaken by cross-examination, then it becomes the business of the Magistrate to decide whether or not it should be accepted. In the absence of contradiction, however, and in the absence of any element of inherent probability the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted.

**[20]** The evidence of the appellant was supported by a contemporaneous police report against which there was no evidence adduced of any information or complaint filed that it was a false report. Thus, though alleged to be false, it remained evidence that could be taken into consideration.

**[21]** For the foregoing reasons, we concluded that the reasoning of the High Court was flawed. It had erred affecting the merits of the case. The majority, therefore, allowed the appeal, set aside the decision of the High Court, and awarded costs in the sum of RM5,000 to the appellants.